

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ELLIS ENTERPRISES, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Corporation Franchise :
Taxes under Article (x) 9-A of the :
Tax Law for the ~~Year(s) or Period(s)~~ Fiscal: :
Year Ending July 31, 1967.

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of March , 1979 , ~~she~~ served the within
Notice of Decision by (certified) mail upon Ellis Enterprises, Inc.

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Ellis Enterprises, Inc.
122 East 42nd Street
New York, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~of the~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

15th day of March , 1979.

Maurice J. Laponeau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ELLIS ENTERPRISES, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Corporation Franchise :
Taxes under Article (x) 9-A of the :
Tax Law for the ~~Year(s) or Period(s)~~ Fiscal :
Year Ending July 31, 1967.

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of March , 1979 , she served the within
Notice of Decision by (certified) mail upon Aaron S. Rogal
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Aaron S. Rogal, CPA
100 Park Avenue
Staten Island, New York 10302

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

15th day of March , 1979.

Maulin J. Papineau

John Huhn



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

March 15, 1979

Ellis Enterprises, Inc.
122 East 42nd Street
New York, New York

Gentlemen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section **(x) 1090** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

MICHAEL ALEXANDER
SUPERVISING TAX HEARING OFFICER

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ELLIS ENTERPRISES, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Fiscal	:	
Year Ending July 31, 1967.	:	

Petitioner, Ellis Enterprises, Inc., 122 East 42nd Street, New York, New York, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal year ending July 31, 1967 (File No. 11671).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 20, 1977 at 10:30 A.M. Petitioner appeared by Aaron S. Rogal, CPA. The Corporation Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether petitioner was timely mailed a Notice of Deficiency for corporation franchise tax due for the fiscal year ending

July 31, 1967, within the three-year period for assessment prescribed by section 1083 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Ellis Enterprises, Inc., filed a New York State Corporation Franchise Tax Report for the fiscal year ending July 31, 1967, signed by the president of the corporation and dated October 15, 1967. The \$25.00 minimum tax stated to be due thereon was paid.

2. On December 15, 1969, a Statement of Audit Adjustment was mailed to petitioner. It contained an explanation and a computation of a deficiency of \$393.24.

3. On October 15, 1970, an Application for Registration or Certification from the Department of Taxation and Finance was stamped by a post office branch in Albany. The name of petitioner appears on that list.

4. Departmental records contain a pencil notation that a Notice of Deficiency was sent to petitioner on October 15, 1970.

5. Petitioner paid the tax determined to be due for the two ensuing fiscal years.

6. A petition was received by the Department of Taxation and Finance from petitioner on March 14, 1974, stating as the ground therefor that the tax was not assessed within the statutory period.

CONCLUSIONS OF LAW

A. That section 1083 of the Tax Law provides that an assessment of corporation franchise tax must be made within three years from the date a return was filed.

B. That petitioner filed a corporate franchise report on October 15, 1967 and that no Notice of Deficiency was mailed within three years thereafter.

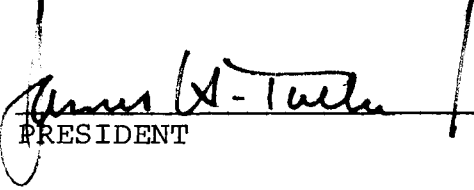
C. That a Notice of Deficiency is the statutory document (pursuant to section 1081 and 1082) required to effectuate an assessment where a taxpayer fails to petition for a hearing within the time prescribed by section 1081(b).

D. That the failure to issue a Notice of Deficiency to petitioner, Ellis Enterprises, Inc., within the statutory prescribed period requires the Commission to determine that no assessment or collection procedure can be pursued by the Department of Taxation and Finance, and that any such assessments for the fiscal year ending July 31, 1967 be cancelled.

DATED: Albany, New York

March 15, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER